Saonah bte Bedul v Pentadbir Tanah dan Daerah Melaka Tengah

HIGH COURT (MELAKA) — SUIT NO 21-6 OF 1994
MOHD NOOR J
5 SEPTEMBER 1994

Civil Procedure *— Injunction — Interim injunction to restrain government from interfering with use of land — Whether damages adequate remedy — Whether plaintiff could obtain order for reconnection of basic amenities pending appeal — Whether tantamount to mandatory injunction — Government Proceedings Act 1956 s 29 — Specific Relief Act 1950 ss 51(2), 53 & 54(d)*

The plaintiff's land ('the land'), together with other neighbouring land, was acquired by the Melaka State Government under the Land Acquisition Act 1960 for the creation of a buffer zone for a nearby Petronas oil refinery project. The award of compensation by the Collector of Land Revenue was rejected by the plaintiff and has been referred to court. The collector served Form K, dated 1 April 1993, on the plaintiff on 9 May 1994 but the plaintiff refused to accept it. The land administrator issued a notice requiring the plaintiff to move out of the land by 31 July 1994. When the plaintiff failed to comply with the notice, the land administrator issued another notice requiring the plaintiff to move out of the land by 18 August 1994, failing which the supply of electricity and water and other basic amenities would be stopped. The plaintiff applied for an interim injunction to restrain the defendant, his servants and agents from interfering with the plaintiff's peaceful occupation of the land and for an order directing the relevant authorities to reconnect the electricity and water supplies to her house situated on the land and to restore all other basic amenities of which she had been deprived since 18 August 1994. The issues were: (i) whether Form K was invalid by reason of the delay; and (ii) whether there was a waiver by the state government as a result of the issuance of the two notices.

Held, dismissing the application:

(1) The issues of delay and waiver had not been extensively canvassed before the court. As such, the disputed facts and difficult questions of law should be left for consideration at the hearing of the main suit.

(2) No evidence was adduced by the plaintiff to show that the land was unique or different from the acquired neighbouring land. As such, damages were an adequate remedy should she succeed in her claims and there was no necessity for the court to consider the question of the balance of convenience.

(3) The plaintiff's application for an interlocutory injunction and reconnection of amenities pending appeal was also dismissed as, inter alia, damages would be an adequate remedy and, in view of

A s 29 of the Government Proceedings Act 1956 and ss 51(2), 53 and 54(d) of the Specific Relief Act 1950, that would be tantamount to granting a mandatory injunction which is classified under perpetual injunctions in Ch X of the Specific Relief Act 1950, and which cannot be granted.

B **Obiter**:

(1) In this case, the balance of convenience would have favoured the defendant rather than the plaintiff because the land was acquired for a public purpose, ie the creation of a safety zone was more important than the plaintiff's interest that she be adequately C compensated.

(2) An interim injunction could be issued against the defendant or an officer of the government in view of s 29(2) of the Government Proceedings Act 1956 read together with ss 50, 51 and 54(d) of the Specific Relief Act 1950.

D **[Bahasa Malaysia summary**

Tanah plaintif ('tanah itu'), bersama dengan tanah lain yang berhampiran, telah diambil oleh Kerajaan Negeri Melaka di bawah Akta Pengambilan Tanah 1960 untuk mewujudkan suatu zon E penampan untuk suatu projek kilang penapis minyak Petronas yang berhampiran. Award pampasan yang dibuat oleh Pemungut Hasil Tanah telah ditolak oleh plaintif dan telah dirujuk ke mahkamah. Pemungut telah menyampaikan Borang K, yang bertarikh 1 April 1993, ke atas plaintif pada 9 Mei 1994 tetapi plaintif enggan menerimanya. Pentadbir tanah telah mengeluarkan suatu notis yang F meminta supaya plaintif keluar dari tanah itu sebelum 31 Julai 1994. Apabila plaintif gagal mematuhi notis itu, pentadbir tanah telah mengeluarkan suatu notis lain yang meminta supaya plaintif keluar dari tanah itu sebelum 18 Ogos 1994, jika tidak bekalan elektrik dan air dan lain-lain kemudahan asas akan dihentikan. Plaintif telah G memohon untuk suatu injunksi interim untuk menghalang defendan, pekerja dan agennya daripada menggangu pendudukan aman tanah itu oleh plaintif dan untuk suatu perintah yang memerintahkan pihak berkuasa yang berkenaan supaya menyambung semula bekalan elektrik dan air ke rumahnya di atas tanah itu dan semua kemudahan asas yang telah dilucutkan daripada beliau sejak 18 Ogos 1994. Isunya H adalah: (i) sama ada Borang K tidak sah disebabkan kelengahan itu; dan (ii) sama ada terdapat suatu penepian oleh kerajaan negeri abibat daripada pengeluaran dua notis itu.

Diputuskan, menolak permohonan itu:

I (1) Isu kelengahan dan penepian itu tidak dihujahkan dengan mendalam di hadapan mahkamah. Dengan demikian, fakta yang dipertikaikan dan soalan undang-undang yang rumit itu seharusnya ditinggalkan untuk pertimbangan di pendengaran tindakan utama.

(2) Keterangan tidak dikemukakan oleh plaintif untuk menunjukkan bahawa tanah itu unik atau berlainan daripada tanah berhampiran yang diambil. Oleh itu, ganti rugi adalah remedi yang mencukupi jika beliau berjaya di dalam tuntutannya dan mahkamah tidak perlu mempertimbangkan soalan mengenai imbangan kemudahan.

(3) Permohonan plaintif untuk suatu injunksi interlocutori dan penyambungan semula kemudahan sementara menunggu rayuan juga ditolak kerana, antara lain, ganti rugi adalah remedi yang mencukupi dan, memandangkan s 29 Akta Prosiding Kerajaan 1956 dan ss 51(2), 53 dan 54(d) Akta Relif Spesifik 1950, itu akan merupakan suatu pemberian injunksi mandatori yang dikelaskan di bawah injunksi berkekalan di dalam Bab X Akta Relif Spesifik 1950, dan yang tidak boleh diberikan.

Obiter:

(1) Di dalam kes ini, imbangan kemudahan memihak kepada defendan lebih daripada plaintif kerana tanah itu telah diambil bagi tujuan awam, iaitu pewujudan suatu zon keselamatan adalah lebih penting daripada kepentingan plaintif untuk mendapat pampasan yang mencukupi.

(2) Suatu injunksi interim boleh dikeluarkan terhadap defendan atau seorang pegawai kerajaan memandangkan s 29(2) Akta Prosiding Kerajaan 1956 dibaca dengan ss 50, 51 dan 54(d) Akta Relif Spesifik 1950.]

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No M–01–15–94.]

Notes

For cases on interim injunctions, see 2 *Mallal's Digest* (4th Ed) paras 1057–1079; [1989] Mallal's Digest 356–361; [1990] Mallal's Digest 265–274; [1991] Mallal's Digest 295–301; [1992] Mallal's Digest 240–247; [1993] Mallal's Digest 194.

Cases referred to

American Cyanamid Co v Ethicon Ltd [1975] AC 396; [1975] 1 All ER 504; [1975] 2 WLR 316 (folld)

Erinford Properties Ltd v Cheshire County Council [1974] Ch 261; [1974] 2 All ER 448; [1974] 2 WLR 749 (refd)

Lim Kit Siang v United Engineers (M) Bhd & Ors [1988] 1 MLJ 35 (folld)

London & Blackwall Railway Co v Cross (1886) 31 Ch D 354 (folld)

Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors [1986] 1 MLJ 362 (refd)

Saw Seng Kee v Director of Lands and Mines, Penang & Ors; *Teoh Han Chee v Director of Lands and Mines, Penang & Ors* [1987] 1 MLJ 80 (folld)

Tan Suan Choo v Majlis Perbandaran Pulau Pinang [1983] 1 MLJ 323 (folld)

Legislation referred to

Government Proceedings Act 1956 s 29(2)
Land Acquisition Act 1960
Specific Relief Act 1950 ss 50, 51, 53, 54(d)

Karpal Singh (*Karpal Singh & Co*) for the plaintiff.
Sulaiman bin Daud (State Legal Adviser) for the defendant.

Cur Adv Vult

Mohd Noor J: The plaintiff applied for an interim injunction to restrain the defendant, his servants and agents from interfering with the plaintiff's peaceful occupation of her land, Lot Nos 1388 and 1389, Mukim Tangga Batu, Melaka (hereinafter referred to as 'the said land'). The plaintiff also applied for an order to direct the relevant authorities to reconnect the electricity and water supplies to her house situated on the said land and to restore all other basic amenities of which she had been deprived since 18 August 1994. Last week I dismissed the application. I shall now proceed to give my reason for that decision.

Briefly, the facts, as revealed by affidavit and oral evidence, are as follows:

(1) The said land together with other neighbouring lands were acquired by the state government under the Land Acquisition Act 1960 ('the Act') for the creation of a buffer zone for the nearby Petronas oil refinery project. The award of compensation which had been made by the Collector of Land Revenue was rejected by the plaintiff, and the objection to the award had been referred to the court by the collector. A test case in respect of such acquisition has been scheduled for hearing on 9 September 1994. The collector took formal possession of the said land by serving Form K on the plaintiff on 9 May 1994, the acceptance of which was refused by the plaintiff. Form K is dated 1 April 1993 (see exhs HH–3 and HH–4 in the affidavit of Haris bin Hasan, the Land Administrator of Melaka Tengah, affirmed on 25 August 1994 ('the said affidavit')). The plaintiff refused to move out of the said land. On 13 July 1994, by administrative action, the land administrator issued a notice requiring the plaintiff to move out of the said land by 31 July 1994, giving the opportunity to the plaintiff to dismantle her house and other buildings on the said land by herself and to remove all building materials for her use elsewhere. The said notice bears no name and address (see exh HH–5 of the said affidavit). The plaintiff did not comply with the said notice. On 9 August 1994, a meeting chaired by the Chief Minister was convened, wherein the decision to stop the supply of electricity and water to the plaintiff's house and other basic amenities to the said land was made. On 11 August 1994, by administrative action, the land administrator again issued another notice requiring the plaintiff to move out of the said land by 18 August 1994, failing which the supply of electricity and water and other basic amenities would be stopped (see exh HH–5 in the said affidavit).

The plaintiff defied the notice and, on 23 August 1994, filed a writ in this court seeking certain declarations, an injunction, damages and other reliefs as prayed therein. Hence, this application was made.

(2) Under cross-examination, the defendant deposed that the said land and the neighbouring lands were acquired for the creation of a safety zone for the nearby Petronas oil refinery project pursuant to a report by the Department of Environment. Further, he stated that the basic amenities, especially the electricity supply, were stopped by reason of the safety of the residents playing in the vicinity due to the presence of live wires in the neighbouring houses involved in the same acquisition which had already been vacated pending demolition by the relevant authorities and that the bus and taxi services were discontinued in order to facilitate the demolishing operation. The plaintiff, when cross-examined, stated that she refused to move out of the said land because the compensation made by the collector was not sufficient.

It is manifestly evident from the facts that:

(1) There was a delay of more than one year in the service of Form K on the plaintiff, which was not explained.

(2) The notices issued through administrative action do not state the name and address of the plaintiff, and therefore, their validity including the service on the plaintiff is questionable.

(3) The objection of the plaintiff towards the collector's award had been referred to the court. The plaintiff refused to move out of the said land because the compensation awarded by the collector was not sufficient.

Mr Karpal Singh, for the plaintiff, contended that by reason of the inordinate and unexplained delay in the service of Form K on the plaintiff, the inquiry and the subsequent award were invalid. He cited the Privy Council case of *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors* [1986] 1 MLJ 362 in support thereof. Further, he asserted that the issuance of the notices through administrative action by the land administrator amounted to a waiver in respect of the statutory notices the land administrator had issued earlier under the Act, and thereafter, a new relationship between the parties was created. As the notices do not state the name and address of the plaintiff and as no affidavit of service was filed, the notices and the purported service on the plaintiff were invalid. On the other hand, Encik Sulaiman, the state legal adviser, for the defendant, submitted that the delay in the service of Form K on the plaintiff does not invalidate any proceeding under the Act by reason of s 56 of the Act. With regard to the issue of waiver, he contended that there was no waiver because the notices which were issued through administrative action cannot override the validity and the operative effect of the statutory notices issued under the Act and further, whether or not the notices had been served on the plaintiff was irrelevant because the collector did not derive his authority to take formal possession of the said land from them but from Form K.

A I am satisfied that the plaintiff had raised the following triable issues:

(1) whether Form K, including its service on the plaintiff, was invalid by reason of inordinate and unexplained delay, and if so, whether such defect would invalidate the inquiry and the subsequent award made by the collector; and

B (2) whether there was a waiver on the part of the acquiring authority as the result of the issuance of the notices dated 13 July 1994 and 11 August 1994 through administrative action after Form K had been served on the plaintiff; and whether the notices, including the purported service on the plaintiff, were valid.

C These issues had not been extensively canvassed before me especially on the issue of waiver, and further, the delay in serving Form K on the plaintiff was not explained. As such, I am not in a position to decide on those issues now but to leave the disputed facts and difficult questions of law for consideration at the hearing of the main suit (see *American Cyanamid* D *Co v Ethicon Ltd* [1975] AC 396 at p 407H; [1975] 1 All ER 504 at p 510d; [1975] 2 WLR 316 at p 323B).

Having been satisfied that the plaintiff has raised those triable issues, what I have to consider next is the question of the balance of convenience. In *London & Blackwall Railway Co v Cross* (1886) 31 Ch D 354 at p 369, E Lindley LJ said:

> The very first principle of injunction law is that prima facie you do not obtain injunctions to restrain actionable wrongs for which damages are the proper remedy.

In the *Cyanamid* case, in dealing with the question of the balance of F convenience, Lord Diplock made the same point in the following terms ([1975] AC 396 at p 408B–C; [1975] 1 All ER 504 at p 510f–g; [1975] 2 WLR 316 at p 323D–E):

> As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right G to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction H should normally be granted, however strong the plaintiff's claim appeared to be at that stage.

On this point, it cannot be denied that the State Government of Malacca was behind the defendant and that no evidence was adduced by the plaintiff to show that the said land was unique or possessed certain speciality, different from the rest of the neighbouring lands involved in the same I acquisition, which could not be compensated for adequately. As such, I had no doubt as to the adequacy of the plaintiff's remedy lying in damages should she succeed in her claims at the final hearing. Hence, there was no necessity for me to consider the further question of the balance of

convenience (see the *Cyanamid* case [1975] AC 396 at p 408F; [1975] 1 All ER 504 at p 511a; [1975] 2 WLR 316 at p 323G–H). But, had it been necessary to do so, then I was satisfied that the balance of convenience favoured the defendant rather than the plaintiff because the said land was acquired for a public purpose (see the Government of Malacca *Gazette* Jilid 35, No 2, Tambahan No 1, No 17 dated 17 January 1991), that is to say, in reality, the creation of a safety zone was more important than the plaintiff's interest that she be adequately compensated, especially so, where her objection to the award had been referred to the court and that a test case in respect of the same acquisition would be heard next week. In *Saw Seng Kee v Director of Lands and Mines, Penang & Ors; Teoh Han Che v Director of Lands and Mines, Penang & Ors* [1987] 1 MLJ 80, his Lordship Edgar Joseph Jr J at p 82H–I, said:

> In considering the question of the balance of convenience, I thought I was entitled to, and did take into consideration, the public interest since Urban Development Authority is a public authority (see *Smith & Ors v Inner London Education Authority* [1978] 1 All ER 411. The wider public interest may, in some cases, as it does in my opinion in this case, prove to be of decisive importance. See, for example, the case of *Rousse-Uclaf v Seanlre & Co* [1977] FSR 125 where the plaintiffs had alleged that a drug marketed by the defendants infringed the plaintiffs' patent, the defendants argued successfully that the drug had life-saving qualities and it was greatly in the public interest not to restrain the sale of such a drug at the interlocutory stage.

On the issue of whether an interim injunction could be issued against the defendant in view of the provisions of s 29(2) of the Government Proceedings Act 1956, as raised by the defendant in the said affidavit, I am of the view that the answer should be in the affirmative. My view is based on the same reasoning as stated by his Lordship Edgar Joseph Jr J in *Tan Suan Choo v Majlis Perbandaran Pulau Pinang* [1983] 1 MLJ 323 at p 324 col 1H–I to col 2A–C:

> ... in my view, s 54 of the Specific Relief Act 1950 applies only to applications for perpetual injunctions. It has no relevance to applications for a temporary injunction as in the instant case. This is clear from a reading of Chs IX and X of the Act which are entitled 'of injunctions generally' and 'of perpetual injunctions', respectively. Section 54(d), relied on by Mr Chandran, falls under Ch X which deals exclusively with perpetual injunctions. Next, s 51(1) which falls under Ch IX states categorically that 'temporary injunctions may be granted for any period of a suit and are regulated by the law relating to civil procedure'. This, in my view, makes the Rules of the High Court 1980 applicable and there is nothing therein which constitutes a bar to the granting of an interim injunction against a municipality. I also notice that at p 909 of *Pollock & Mulla on the Indian Contract and Specific Relief Acts* (8th Ed), there appears the following short sentence in the commentary entitled 'Scope of the section' on s 56 of the Indian Act which is generally in pari materia with s 54 of our Act: 'This section gives a list of cases in which a *perpetual injunction cannot be granted*'. (Emphasis provided).

Although in that case his Lordship was dealing with s 54(d) of the Specific Relief Act 1950 in relation to a local authority, I am of the opinion that

s 29 of the Government Proceedings Act 1956 relating to injunctions only should be read together especially with ss 50, 51 and 54(d) of the Specific Relief Act 1950 and that the same consideration should be applied to an officer of the government, otherwise an awkward situation would arise where, in relation to a temporary injunction only, the government or any of its officers can take shelter under one Act, that is to say, the Government Proceedings Act 1956 but not under the other Act, that is to say, the Specific Relief Act 1950, as was what had happened in the case of *Lim Kit Siang v United Engineers (M) Bhd & Ors* [1988] 1 MLJ 35, where his Lordship Edgar Joseph Jr J also applied the provisions of s 29 of the Government Proceedings Act 1956 in dismissing the application for an interlocutory prohibitory injunction.

Therefore, the application is dismissed with costs.

I also refused an application by En Karpal Singh for an interlocutory injunction pending appeal after he had cited the case of *Erinford Properties Ltd v Cheshire County Council* [1974] Ch 261; [1974] 2 All ER 448; [1974] 2 WLR 749. My reasons are as follows:

(1) The appeal would be frivolous having regard to the fact that damages would be adequate remedy and that the defendant would be in a financial position to pay them, should the plaintiff succeed at the trial of the main suit.

(2) En Karpal Singh also applied for an order to direct the relevant authorities to reconnect the supply of electricity and water and to restore all other basic amenities if the Erinford injunction is granted. This is not possible because, in view of s 29 of the Government Proceedings Act 1956 and ss 51(2), 53 and 54(d) of the Specific Relief Act 1950, that would be tantamount to the granting of a mandatory injunction which is classified under perpetual injunctions in Ch X of the latter Act. Furthermore, it would not be to the best interests of the plaintiff, not only in terms of her safety but also the safety of her other neighbours, including visitors, due to the presence of live wires in the neighbouring houses affected by the same acquisition which had already been vacated and to be demolished by the relevant authorities at any time.

(3) If the Erinford injunction is granted only to restrain the defendant, his servants and agents from interfering with the plaintiff's peaceful occupation of the said land, without the supplies of electricity and water and other basic amenities, it would be detrimental to the plaintiff's well-being.

Application dismissed.

Reported by Anne Khoo